Ordinance Summary

The City of Greensburg, Kansas, on February 4, 2019 adopted Ordinance No. 1085 regulating the sale of cereal malt beverage and beer containing not more than 6% alcohol by volume within the City of Greensburg and repealing Ordinance No. 1034. This ordinance makes necessary changes to Chapter III Beverages, Article 2 Cereal Malt Beverages, of the Code of the City of Greensburg, Kansas, bringing it into compliance with State Statute effective April 1, 2019. The complete text of Ordinance 1085 may be viewed or obtained free of charge at the office of the City Clerk or may be read on the City’s website www.greensburgks.org for one week after this publication.

I certify the above summary of Ordinance 1085 is legally accurate and sufficient.

Date: February 4, 2019

Clayton I. Kerbs
City Attorney
ORDINANCE NO. 1085

AN ORDINANCE REGULATING THE SALE OF CEREAL MALT BEVERAGE AND BEER CONTAINING NOT MORE THAN 6% ALCOHOL BY VOLUME WITHIN THE CITY OF GREENSBURG, KANSAS AND REPEALING ORDINANCE NO. 1034

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GREENSBURG:

Section 1. DEFINITION. Section 3-101 of the code of the City of Greensburg is hereby amended to read as follows:

(a) Alcohol - means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin thereof, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.

(b) Cereal Malt Beverage - means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, but does not include any such liquor which is more than 3.2 percent alcohol by weight.

(c) Enhanced Cereal Malt Beverage - means cereal malt beverage as that term is defined in K.S.A. 41-2701, and amendments thereto, and such term shall include beer containing not more than 6% alcohol by volume when such beer is sold by a retailer licensed under the Kansas cereal malt beverage act.

(d) Class A Club - means a premises which is owned or leased by a corporation, partnership, business trust or association and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the State of Kansas, for the exclusive use of the corporate stockholders, partners, trust beneficiaries or associates (hereinafter referred to as members), and their families and guests accompanying them.

(e) Class B Club - means a premises operated for profit by a corporation, partnership or individual, to which members of such club may resort for the consumption of food or alcoholic beverages and for entertainment.

(f) Club - means a Class A or Class B club.

(g) General Retailer - means a person who has a license to sell cereal malt beverages at retail.

(h) Limited Retailer - means a person who has a license to sell cereal malt beverages at retail only in original and unopened containers and not for consumption on the premises.

(i) Place of Business. - Any place at which cereal malt beverages or alcoholic beverages or both are sold.

(j) Wholesaler or distributor. - Any individuals, firms, copartnerships, corporations and associations which sell or offer for sale any beverage referred to in this chapter, to persons, copartnerships, corporations and associations authorized by this chapter to sell cereal malt beverages at retail.

Section 2. LICENSE ISSUED BY CITY. The "Cereal Malt Beverage License" issued by the city of Greensburg pursuant to this ordinance, authorizes the sale of enhanced cereal malt beverage as defined in section 1, by those retailers in compliance with this ordinance and other laws and regulations that may apply.

Section 3. LICENSE REQUIRED OF RETAILER. Section 3-201 of the code of the City of Greensburg is hereby amended to read as follows:

(a) It shall be unlawful for any person to sell any enhanced cereal malt beverage at retail without a license for each place of business where enhanced cereal malt beverages are to be sold at retail.

(b) It shall be unlawful for any person, having a license to sell enhanced cereal malt beverages at retail only in the original and unopened containers and not for consumption on the premises, to sell any enhanced cereal malt beverage in any other manner.
Section 4. APPLICATION. Section 3-202 of the code of the City of Greensburg is hereby amended to read as follows:

Any person desiring a license shall make an application to the governing body of the city and accompany the application by the required license fee for each place of business for which the person desires the license. The application shall be verified, and upon a form prepared by the attorney general of the State of Kansas, and shall contain:

(a) The name and residence of the applicant and how long he or she has resided within the State of Kansas;
(b) The particular place for which a license is desired;
(c) The name of the owner of the premises upon which the place of business is located;
(d) The names and addresses of all persons who hold any financial interest in the particular place of business for which a license is desired.
(e) A statement that the applicant is a citizen of the United States and not less than 21 years of age and that he or she has not within two years immediately preceding the date of making application been convicted of a felony or any crime involving moral turpitude, or been adjudged guilty of drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States;

Section 5. LICENSE APPLICATION PROCEDURES. Section 3-202a of the code of the City of Greensburg is hereby amended to read as follows:

(a) All applications for a new and renewed enhanced cereal malt beverage license shall be submitted to the city clerk 10 days in advance of the governing body meeting at which they will be considered.
(b) The city clerk's office shall notify the applicant of an existing license 30 days in advance of its expiration.
(c) The clerk's office shall provide copies of all applications to the police department, to the fire department, and to the city-county health department, when they are received. The police department will run a record check on all applicants and the fire department and health department will inspect the premises. The departments will then recommend approval, or disapproval, of applications within five working days of the department's receipt of the application.
(d) The governing body will not consider any application for a new or renewed license that has not been submitted 10 days in advance and been reviewed by the above city departments.
(e) An applicant who has not had an enhanced cereal malt beverage license in the city shall attend the governing body meeting when the application for a new license will be considered.

Section 6. LICENSE GRANTED; DENIED. Section 3-203 of the code of the City of Greensburg is hereby amended to read as follows:

(a) The journal of the governing body shall show the action taken on the application.
(b) If the license is granted, the city clerk shall issue the license which shall show the name of the licensee and the year for which issued.
(c) No license shall be transferred to another licensee.
(d) If the license shall be denied, the license fee shall be immediately returned to the person who has made application.

Section 7. LICENSE TO BE POSTED. Section 3-204 of the code of the City of Greensburg is hereby amended to read as follows:

Each license shall be posted in a conspicuous place in the place of business for which the license is issued.
Section 8. LICENSE, DISQUALIFICATION. Section 3-205 of the code of the City of Greensburg is hereby amended to read as follows:

No license shall be issued to:

(a) A person who has not been a resident in good faith of the state of Kansas for at least one year immediately preceding application and a resident of Kiowa county for at least six months prior to filing of such application.
(b) A person who is not a citizen of the United States.
(c) A person who is not of good character and reputation in the community in which he or she resides.
(d) A person who, within two years immediately preceding the date of making application, has been convicted of a felony or any crime involving moral turpitude, or has been adjudged guilty of drunkenness or driving a motor vehicle while under the influence of intoxicating liquor or the violation of any other intoxicating liquor law of any state or of the United States.
(e) A partnership, unless all the members of the partnership shall otherwise be qualified to obtain a license.
(f) A corporation if any manager, officer or director thereof or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation would be ineligible to receive a license hereunder for any reason other than non-residence within the city or county.
(g) A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25 percent of the stock of such corporation, has been an officer, manager or director, or a stockholder owning in the aggregate more than 25 percent of the stock, of a corporation which: (A) Has had a retailer’s license revoked under K.S.A. 41-2708 and amendments thereto; or (B) has been convicted of a violation of the drinking establishment act or the cereal malt beverage laws of this state.
(h) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee.
(i) A person whose spouse would be ineligible to receive a retailer’s license for any reason other than citizenship, retailer residency requirements or age, except that this subsection (i) shall not apply in determining eligibility for a renewal license.

Section 9. RESTRICTION UPON LOCATION. Section 3-206 of the code of the City of Greensburg is hereby amended to read as follows:

(a) No license shall be issued for the sale at retail of any enhanced cereal malt beverage on premises which are located in areas not zoned for such purpose.
(b) It shall be unlawful to sell or dispense at retail any enhanced cereal malt beverage at any place within the city limits that is within a 200-foot radius of any church, school or library.
(c) Provisions shall not apply to any establishment holding a private club license issued by the State of Kansas.
(d) The distance limitation of subsection (b) above shall not apply to any establishment holding an enhanced cereal malt beverage license issued by the city when the licensee has petitioned for and received a waiver of the distance limitation. The governing body shall grant such a waiver only following public notice and hearing.

Section 10. LICENSE FEE. Section 3-207 of the code of the City of Greensburg is hereby amended to read as follows:

The rules and regulations regarding license fees shall be as follows:

(a) General Retailer -- for each place of business selling enhanced cereal malt beverages at retail, $225.00 per calendar year (inclusive of a $25.00 application fee.)
(b) Limited Retailer -- for each place of business selling only at retail enhanced cereal malt beverages in original and unopened containers and not for consumption on the premises, $75.00 per calendar year (inclusive of a $25.00 application fee.)
Full amount of the license fee shall be required regardless of the time of the year in which the application is made, and the licensee shall only be authorized to operate under the license for the remainder of the calendar year in which the license is issued.

Section 11. SUSPENSION OF LICENSE. Section 3-208 of the code of the City of Greensburg is hereby amended to read as follows:

The chief of police, upon five days' written notice, shall have the authority to suspend such license for a period not to exceed 30 days, for any violation of the provisions of this ordinance or other laws pertaining to enhanced cereal malt beverages, which violation does not in his or her judgment justify a recommendation of revocation. The licensee may appeal such order of suspension to the governing body within seven days from the date of such order.

Section 12. LICENSE SUSPENSION/REVOCATION BY GOVERNING BODY. Section 3-209 of the code of the City of Greensburg is hereby amended to read as follows:

The governing body of the city, upon five days' written notice, to a person holding a license to sell enhanced cereal malt beverages shall permanently revoke or cause to be suspended for a period of not more than 30 days such license for any of the following reasons:

(a) If a licensee has fraudulently obtained the license by giving false information in the application therefor;
(b) If the licensee has violated any of the provisions of this section or has become ineligible to obtain a license under this section;
(c) Drunkenness of a person holding such license, drunkenness of a licensee's manager or employee while on duty and while on the premises for which the license is issued, or for a licensee, his or her manager or employee permitting any intoxicated person to remain in such place selling enhanced cereal malt beverages;
(d) The sale of enhanced cereal malt beverages to any person under 21 years of age;
(e) For permitting any gambling in or upon any premises licensed;
(f) For permitting any person to mix drinks with materials purchased in any premises licensed or brought into the premises for this purpose;
(g) For the employment of any person under the age established by the State of Kansas for employment involving dispensing enhanced cereal malt beverages;
(h) For the employment of persons adjudged guilty of a felony or of a violation of any law relating to intoxicating liquor;
(i) For the sale or possession of, or for permitting the use or consumption of alcoholic liquor within or upon any premises licensed;
(j) The nonpayment of any license fees;
(k) If the licensee has become ineligible to obtain a license;
(l) The provisions of subsections (f) and (i) shall not apply if such place of business is also currently licensed as a private club.

Section 13. SAME; APPEAL. Section 3-210 of the code of the City of Greensburg is hereby amended to read as follows:

The licensee, within 20 days after the order of the governing body revoking any license, may appeal to the district court of Kiowa county and the district court shall proceed to hear such appeal as though such court had original jurisdiction in the matter. Any appeal taken shall not suspend the order of revocation of the license of any licensee, nor shall any new license be issued to such person or any person acting for or on his or her behalf, for a period of six months thereafter.

Section 14. CHANGE OF LOCATION. Section 3-211 of the code of the City of Greensburg is hereby amended to read as follows:

If a licensee desires to change the location of his or her place of business, he or she
shall make an application to the governing body showing the same information relating to the proposed location as in the case of an original application. Such application shall be accompanied by a fee of $50.00. If the application is in proper form and the location is not in a prohibited zone and all other requirements relating to such place of business are met, a new license shall be issued for the new location for the balance of the year for which a current license is held by the licensee.

Section 15. WHOSEALERS AND/OR DISTRIBUTORS. Section 3-212 of the code of the City of Greensburg is hereby amended to read as follows:

It shall be unlawful for any wholesaler and/or distributor, his, her or its agents or employees, to sell and/or deliver enhanced cereal malt beverages within the city, to persons authorized to sell the same within this city unless such wholesaler and/or distributor has first secured a license from the director of revenue, state commission of revenue and taxation of the State of Kansas authorizing such sales.

Section 16. BUSINESS REGULATIONS. Section 3-213 of the code of the City of Greensburg is hereby amended to read as follows:

It shall be the duty of every licensee to observe the following regulations.

(a) The place of business licensed, and operating shall at all times have a front and rear exit unlocked when open for business.

(b) The premises and all equipment used in connection with such business shall be kept clean and in a sanitary condition and shall at all times be open to the inspection of the police and health officers of the city, county and state.

(c) Except as provided by subsection (d), no enhanced cereal malt beverages may be sold or dispensed between the hours of 12:00 midnight and 6:00 a.m., or consumed between the hours of 12:30 a.m., and 6:00 a.m., or on Sunday, except in a place of business which is licensed to sell cereal malt beverage for consumption on the premises, which derives not less than 30 percent of its gross receipts from the sale of food for consumption on the licensed premises; closing hours for clubs shall conform to K.S.A. 41-2614 and amendments thereto.

(d) Enhanced cereal malt beverages may be sold at any time alcoholic liquor is allowed by law to be served on premises which are licensed pursuant to K.S.A. 41-2601, et seq. and amendments thereto, and licensed as a club by the State Director of Alcoholic Beverage Control.

(e) The place of business shall be open to the public and to the police at all times during business hours, except that premises licensed as a club under a license issued by the State Director of Alcoholic Beverage Control shall be open to the police and not to the public.

(f) It shall be unlawful for any licensee or agent or employee of the licensee to become intoxicated in the place of business for which such license has been issued.

(g) No licensee or agent or employee of the licensee shall permit any intoxicated person to remain in the place of business for which such license has been issued.

(h) No licensee or agent or employee of the licensee shall sell or permit the sale of enhanced cereal malt beverage to any person under 21 years of age.

(i) No licensee or agent or employee of the licensee shall permit any gambling in the place of business for which such license has been issued.

(j) No licensee or agent or employee of the licensee shall permit any person to mix alcoholic drinks with materials purchased in said place of business or brought in for such purpose.

(k) No licensee or agent or employee of the licensee shall employ any person under 21 years of age in dispensing enhanced cereal malt beverages. No licensee shall employ any person who has been judged guilty of a felony.

Section 17. PROHIBITED CONDUCT ON PREMISES. Section 3-214 of the code of the City of Greensburg is hereby amended to read as follows:
The following conduct by an enhanced cereal malt beverage licensee, manager or employee of any licensed enhanced cereal malt beverage establishment is deemed contrary to public welfare and is prohibited:

(a) Remaining or permitting any person to remain in or upon the premises who exposes to view any portion of the female breasts below the top of the areola or any portion of males/female's pubic hair, anus, buttocks or genitals;

(b) Permitting any employee on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva or genitals of any other employee or any patron;

(c) Encouraging or permitting any patron on the licensed premises to touch, caress or fondle the breasts, buttocks, anus, vulva, or genitals of any employee;

(d) Performing or permitting any person to perform on the licensed premises acts of or acts which simulate:

(1) Sexual intercourse, masturbation, sodomy, or any other sexual act which is prohibited by law; or

(2) Touching, caressing or fondling such persons' breasts, buttocks, anus or genitals.

(e) Using or permitting any person to use on the licensed premises, any artificial devices or inanimate objects to depict any of the acts prohibited by paragraph (d).

(f) Showing or permitting any person to show on the licensed premises any motion picture, film, photograph, electronic reproduction, or other visual reproduction depicting:

(1) Acts or simulated acts of sexual intercourse, masturbation, sodomy, or any sexual act which is prohibited by law;

(2) The touching, caressing or fondling of the buttocks, anus, genitals or the female breasts;

(3) Scenes in which a person displays the buttocks, anus, genitals or the female breasts.

(g) The term premises means the premises licensed by the city as an enhanced cereal malt beverage establishment and such other areas, under the control of the licensee or his or her employee or employees, that are in such close proximity to the licensed premises that activities and conduct of persons within such other areas may be viewed by persons on or within the licensed premises.

Section 18. SANITARY CONDITIONS REQUIRED. Section 3-215 of the code of the City of Greensburg is hereby amended to read as follows:

All parts of the licensed premises including furnishings and equipment shall be kept clean and in a sanitary condition, free from flies, rodents and vermin at all times. The licensed premises shall have at least one restroom for each sex easily accessible at all times to its patrons and employees. The restroom shall be equipped with at least one lavatory with hot and cold running water, be well lighted, and be furnished at all times with paper towels or other mechanical means of drying hands and face. Each restroom shall be provided with adequate toilet facilities which shall be of sanitary design and readily cleanable. The doors of all toilet rooms shall be self-closing and toilet paper at all times shall be provided. Easily cleanable receptacles shall be provided for waste material and such receptacles in toilet rooms for women shall be covered. The restrooms shall at all times be kept in a sanitary condition and free of offensive odors and shall be at all times subject to inspection by the city health officer or designee.

Section 19. MINORS ON PREMISES. Section 3-216 of the code of the City of Greensburg is hereby amended to read as follows:

(a) It shall be unlawful for any person under 21 years of age to remain on any premises where the sale of enhanced cereal malt beverages is licensed for on-premises consumption.

(b) This section shall not apply if the person under 21 years of age is an employee of the licensed establishment, or is accompanied by his or her parent or guardian, or if the licensed
establishment derives not more than 30 percent of its gross receipts in each calendar year from the sale of enhanced cereal malt beverages for on-premises consumption.

Section 20. TEMPORARY LICENSE. Section 3-217 of the code of the City of Greensburg is hereby amended to read as follows:

The Governing Body may, upon proper application, issue a temporary permit for the sale of enhanced cereal malt beverages. Any such application for a temporary permit shall be made to the City Clerk and shall provide the following information:

(a) The name of Applicant.
(b) The group for which the event is planned.
(c) The location of the event.
(d) The date and time of the event.
(e) Any anticipated need for police, fire, or other municipal service.

Upon receipt of such Application accompanied by a permit fee of $50.00, the Governing Body may authorize the issuance of such temporary permit notwithstanding location restrictions as provided for within Section 3-109 herein. All other provisions and regulations found with Chapter III applicable to the sale of cereal malt beverages will be applicable to such permit.

Section 21. Ordinance 1034 is hereby repealed.

Section 22. This ordinance shall be published one time in the official city newspaper.

Section 23. This ordinance shall take effect and be in force from and after April 1, 2019.

PASSED AND APPROVED this 4th day of February, 2019.

Matt Christenson, Mayor

ATTEST:

Christy Pyatt, City Clerk

[SEAL]